

1984 WL 249994 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 22, 1984

\*1 The Honorable L. Mendel Rivers, Jr.  
Judge  
Family Court of the Ninth Judicial Circuit  
P. O. Box 275  
Moncks Corner, SC 29461

Dear Judge Rivers:

In your letter of July 31, 1984, you inquire as to whether or not the parties to a divorce action may waive the provisions of [Section 20-3-60, South Carolina Code](#) of Laws, 1976, as amended. You further inquire as to whether the provisions of [Section 20-3-60](#) are mandatory and cannot be waived and, if so, does the Court lose subject matter jurisdiction over a cause brought in violation thereof.

[Section 20-3-60, South Carolina Code](#) of Laws, 1976, as amended, reads as follows:

Actions for divorce from the bonds of matrimony shall be tried in the county (a) in which the defendant resides at the time of the commencement of the action, (b) in which the plaintiff resides if the defendant is a non-resident or after due diligence cannot be found, or (c) in which the parties last resided together as husband and wife unless the plaintiff is a non-resident in which case it must be brought in the county in which the defendant resides.

The essence of your inquiry is whether this Section confers subject matter jurisdiction on the Family Court or whether in fact this Section is a venue statute. The ultimate answer to your inquiry, of course, rests with the Supreme Court or the Court of Appeals. Therefore, the information contained hereafter is purely advisory in nature and not to be construed as an official opinion of this Office.

The Judicial Reform Act of 1976 made the Family Courts a part of the uniform judicial system in South Carolina. Pursuant to that Act, the Family Courts were given jurisdiction in all domestic matters, see, [Section 20-7-420\(2\), South Carolina Code](#) of Laws, 1976, as amended.

Therefore, subject to this authority, the Family Courts throughout the state have the jurisdiction to hear divorce actions. The provisions of [Section 20-3-60](#) provide where within the state such actions should be heard. The cases dealing with [Section 20-3-60](#) have repeatedly interpreted it as a venue statute. [Thomas v. Thomas](#), 218 S.C. 235, 62 S.E.2d 307 (1950); [Brockman v. Brockman](#), 253 S.C. 528, 171 S.E.2d 862 (1970); [Voravudhi v. Voravudhi](#), 273 S.C. 407, 257 S.E.2d 156 (1979).

[Section 20-7-440, South Carolina Code](#) of Laws, 1976, as amended, is the general venue statute applicable to the Family Court. This Section alludes to [Section 20-3-60](#) and the general law governing change of venue, [Section 15-7-100](#). In your memorandum of June 1, 1979, which you included in your request letter, you have analyzed the case law dealing with change of venue under [Section 15-7-100](#). It seems quite clear and in accord with your memorandum that there are two (2) very divergent lines of cases, the older characterizing situations where the improper county is named in the complaint as a defect in subject matter jurisdiction, and the more recent line of cases establishing a trend away from finding subject matter jurisdiction in venue statutes.

\*2 It is my conclusion that [Section 20-3-60](#) is a venue statute and that it is proper to hear a matter if any of the three (3) listed alternatives of [Section 20-3-60](#) are met. However, the venue would be improper if brought outside the three (3) listed

alternatives and subject to a transfer of venue motion by either party. Nevertheless, in view of the older line of cases, particularly [Taylor v. Wall](#), 321 S.C. 683, 100 S.E.2d 400 (1957), it is possible that a Court could view this issue as one of subject matter jurisdiction and thus not susceptible to waiver and subject to being raised by the Court itself. Generally, however, Courts view venue as subject to waiver by the parties as our Supreme Court has done in the more recent cases of [Brockman](#), *supra*, and [Voravudhi](#), *supra*. It is my belief that this recent trend is the more legally sound approach.

In view of the lack of clarity in this area, it is my advice in a situation where an action is brought outside the provisions of [Section 20-3-60](#), the Court, upon a proper showing, should order sua sponte, a change of venue to the proper place pursuant to [Section 20-3-60](#).

Sincerely,

B. J. Willoughby  
Assistant Attorney General

1984 WL 249994 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.